



December 6, 1999

Ms. Ann Dillon  
Legal Counsel  
General Services Commission  
P.O. Box 13047  
Austin, Texas 78711-3047

OR99-3509

Dear Ms. Dillon:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID # 130871.

The General Services Commission (the "commission") received a request for copies of a particular invitation for bid and the bidders' responses. You have submitted the requested information for our review. You claim that it is excepted from required public disclosure under section 552.104 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.

Section 552.104 of the Government Code excepts information from required public disclosure if release of the information would give advantage to a competitor or bidder. The purpose of section 552.104 is to protect the interests of a governmental body, typically in a competitive bidding situation prior to the award of the contract. *See* Open Records Decision No. 592 (1991). Section 552.104 protects information from public disclosure if the governmental body demonstrates potential harm to its interests in a particular situation. *See* Open Records Decision No. 463 (1987). Generally, section 552.104 does not except bid information from public disclosure after the bidding is concluded and the contract has been awarded. *See* Open Records Decision No. 541 (1990).

You state that the requested information relates to an instance in which, after the bids had been opened and an initial determination of low bid made, the bidding was canceled because of a procedural defect, and no award was made. You state that the contract will be re-advertised for bidding in the near future. Based on your representations, we conclude that the requested bidders' responses are excepted from public disclosure under section 552.104

until such time as the contract has been awarded. You have not demonstrated, however, that the release of the related invitation to bid would harm the integrity of the bidding process. Therefore, the commission may not withhold that information.<sup>1</sup>

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

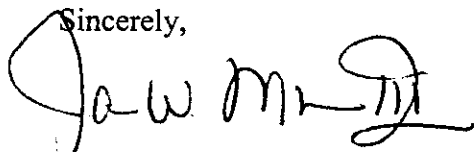
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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<sup>1</sup>This letter addresses only the responsive bid information that you submitted for our review. It does not encompass the related correspondence and internal memoranda, which we presume that you included as background information.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J W Morris III". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/nc

Ref: ID# 130871

Encl. Submitted documents

cc: Mr. Kurtiss E. Summers  
Vice President  
Austin Welder & Generator Service Inc.  
2004 Howard Lane  
Austin, Texas 78728  
(w/o enclosures)